

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2                                   **COMMISSIONERS**

3                   MARC SPITZER, Chairman  
4                   WILLIAM A. MUNDELL  
5                   JEFF HATCH-MILLER  
6                   MIKE GLEASON  
7                   KRISTIN K. MAYES

6	In the matter of	)	
7	ELLIOT CROSBY	)	DOCKET NO. S-03510A-02-0000
8	10253 East Jerome	)	
9	Mesa, Arizona 85208,	)	DECISION NO. <u>66965</u>
10	MARSHA CROSBY	)	<b>ORDER TO CEASE AND DESIST, ORDER</b>
11	2898 East Harwell Road	)	<b>OF RESTITUTION, ORDER FOR</b>
	Gilbert, Arizona 85234-1476,	)	<b>ADMINISTRATIVE PENALTIES AND</b>
	Respondent.	)	<b>CONSENT TO SAME</b>
		)	<b>BY: ELLIOT CROSBY</b>

12                   RESPONDENT ELLIOT CROSBY ("CROSBY") elects to permanently waive any right to  
13 a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. §44-1801  
14 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order of Restitution,  
15 Order for Administrative Penalties and Consent to Same by: Elliot Crosby ("Order"). CROSBY  
16 admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits  
17 nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to  
18 the entry of this Order by the Commission.

19                                   **I**

20                                   **FINDINGS OF FACT**

21                   1.       Respondent CROSBY at all times material hereto was a resident of Arizona. At all  
22 times material hereto, CROSBY was licensed to sell insurance in the state of Arizona, but was not  
23 registered as a securities salesperson or an investment advisor representative in Arizona.

24                                   **Alpha Telcom, Inc.**

25                   2.       At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon  
26 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

1           3.     At all times material hereto, American Telecommunications Company, Inc.  
2 (“ATC”) was a Nevada corporation formed as a wholly owned subsidiary of Alpha on September  
3 17, 1998. Originally named ATC, Inc., the name was changed to American Telecommunications  
4 Company, Inc., sometime in the first half of 2000. Its address was the same as Alpha’s, but was  
5 later changed to 620 S.W. 4<sup>th</sup> Street, Grants Pass, Oregon 97526, then to 2900 Vine Street, Suite J,  
6 Grants Pass, Oregon 97526, and then to 942 S.W. 6<sup>th</sup> Street, Suite G, Grants Pass, Oregon 97526.

7           4.     At all times material hereto, Paul S. Rubera was the president and control person of  
8 Alpha, and the control person of ATC.

9           5.     ATC was organized by Rubera and operated in conjunction with and as an alter ego  
10 of Alpha. The two companies were controlled by Rubera, and there was in reality no real  
11 difference between the two companies.

12          6.     ATC was presented to the public as the sales organization for Alpha. CROSBY,  
13 directly or indirectly, entered into agreements with Alpha and/or ATC pursuant to which CROSBY  
14 sold investment contracts involving Alpha pay telephones (the “Alpha investment contracts”)  
15 within or from the state of Arizona.

16          7.     At the time CROSBY entered into agreements to sell the Alpha investment  
17 contracts, Alpha and/or ATC and/or their affiliates or associates advised CROSBY that the  
18 investments in question were not required to be registered as securities under Arizona law, and  
19 provided him with copies of attorney opinion letters advising that the investments were not  
20 securities.

21          8.     At all times material hereto, Alpha sold pay telephones with telephone service  
22 agreements pursuant to which the investor would share in the profits of the pay telephone. The  
23 telephones were presented to potential investors with four options in the way of service contracts,  
24 each varying in the amount of service provided. The four options varied from Level 1, which  
25 included a minimum of service, to Level 4, which provided full service to the purchaser, including  
26 choosing a site and installing the telephone, collecting all revenue from the telephone’s operation,

1 repairing the telephone when necessary, and even repurchasing or buying back the telephone at the  
2 investor's option. Under Level 4, Alpha would split the net proceeds with the investor on a 70/30  
3 basis, with Alpha retaining 70% and the investor receiving 30%. The price of the pay telephones  
4 was the same regardless of the service option chosen, \$5,000.00 per telephone. CROSBY sold  
5 only investment contracts under Level 4. A "typical return" on each pay telephone was projected  
6 as 14% per year. In practice, all purchasers received \$58.34 per month per pay telephone  
7 purchased, which amounted to exactly 14% per annum.

8 9. CROSBY told prospective investors that their investments were insured, which was  
9 based on Crosby's good faith belief. The insurer named varied. Mentioned most often was the  
10 Northern and Western Insurance Company of Grand Turk, Turks and Caicos Islands, British West  
11 Indies ("N&W"). Also mentioned were Lloyd's of London and four other insurance companies  
12 listed as re-insurers. N&W was a captive insurance company wholly owned by Paul S. Rubera, the  
13 President and control person of Alpha, and Robert S. Harrison of Richmond, Texas. N&W is not  
14 authorized to write insurance in Arizona. On information and belief, N&W was not authorized to  
15 write insurance in any state in which the Alpha pay telephones were located. In a letter dated  
16 August 15, 2001, Harrison stated: "There is not now, nor was there ever any insurance coverage  
17 for Alpha Telcom, Inc."

18 10. CROSBY presented Alpha to prospective customers as a stable profitable and  
19 innovative company that had been in business since 1985. Alpha was said to be selling and  
20 providing a "turn-key" operation.

21 11. Sales agents were paid commissions from 12% to 19% per telephone sold.

22 12. Pursuant to this commission schedule, CROSBY sold Alpha investment contracts to  
23 [number] of individuals or entities within or from the state of Arizona from June, 2000 through May,  
24 2001, for a total purchase amount of \$2,130,000, and earned commissions in an amount exceeding  
25 \$100,000.

26 13. Alpha has a long regulatory history in which state securities regulators have found that

1 these purchases of pay telephones and accompanying service contracts were unregistered securities in  
 2 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered  
 3 Alpha and those working with it to cease and desist. The majority of Arizona investors, and possibly  
 4 all Arizona investors, were not aware of these orders. The orders that could have been disclosed to  
 5 investors include:

- 6 a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities  
 7 Commission in *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- 8 b. November 17, 1999, Cease and Desist Order issued by North Carolina  
 9 Secretary of State in *In the Matter of the North Carolina Securities Division*  
 10 *v. ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 11 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary  
 12 of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 13 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary  
 14 of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201, Alpha agreeing  
 15 to offer rescission to all Illinois purchasers.
- 16 e. November 24, 1999, Cease and Desist Order issued by Wisconsin  
 17 Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc.*  
 18 *and Paul S. Rubera, et al.*, No. S-99225(EX).
- 19 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode  
 20 Island Department of Business Regulation in *In the Matter of Alpha Telcom,*  
*Inc. and ATC, Inc.*
- 21 g. July 18, 2000, Florida Department of Banking and Finance filed  
 22 administrative action against Alpha and others, seeking a Cease and Desist  
 23 Order.
- 24 h. October 24, 2000, Desist and Refrain Order issued by California Department  
 25 of Corporations.

26 14. Actions that have proceeded against Alpha since CROSBY ceased selling the  
 Alpha investment contracts include:

- 27 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of  
 28 Securities;
- 29 b. August 27, 2001, Temporary Restraining Order issued by United States  
 30 District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No.  
 CV 01-1283 PA

- c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department in *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- e. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- f. March 13, 2002, Final Order to Cease and Desist issued by Washington Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc., et al.*, No. SDO-21-02.

The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay expenses, and that the money paid to existing investors always came from sales to new investors. Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not admit the allegations of the Complaint.

15. Some other jurisdictions had entered orders that the Alpha investment contracts, or similar pay telephone investments, were not securities.

16. Alpha's monthly payments to investors ceased prior to August, 2001.

## II.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. CROSBY offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. CROSBY violated A.R.S. § 44-1841 by offering or selling securities that were

1 neither registered nor exempt from registration.

2 4. CROSBY violated A.R.S. § 44-1842 by offering or selling securities while neither  
3 registered as a dealer or salesman nor exempt from registration.

4 5. CROSBY's conduct is grounds for a cease and desist order pursuant to A.R.S.  
5 § 44-2032.

6 6. CROSBY's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
7 2032.

8 7. CROSBY's conduct is grounds for administrative penalties under A.R.S.  
9 § 44-2036.

10 **III.**

11 **ORDER**

12 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and CROSBY's  
13 consent to the entry of this Order, the Commission finds that the following relief is appropriate, in  
14 the public interest, and necessary for the protection of investors:

15 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that CROSBY, and any of CROSBY's  
16 agents, employees, successors and assigns, permanently cease and desist from violating the  
17 Securities Act.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that CROSBY shall pay  
19 restitution to investors shown on the records of the Commission in the amount of \$100,000.00,  
20 plus interest at the rate of 10% per annum from the date of this order until paid in full. Payment  
21 shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in  
22 an interest-bearing account maintained and controlled by the Arizona Attorney General, with the  
23 initial payment of \$1,000.00 due and payable on the date of this Order, and \$1,000.00 per month  
24 due and payable on the first day of each month, beginning the first day of the month following the  
25 date of entry of this Order, until the restitution amount is paid in full. The Arizona Attorney  
26 General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney

General is unable to disburse shall revert to the state of Arizona.

If CROSBY does not comply with this order of restitution, any outstanding balance shall be in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that CROSBY shall pay an administrative penalty in the amount of \$10,000. Payment shall be made by cashier's check or money order, payable to the "State of Arizona," in installments of \$1,000.00 per month, with the initial installment being due on the first day of the month following the final payment of restitution as herein provided.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

/s/ Marc Spitzer

CHAIRMAN

William A. Mundell

COMMISSIONER

Jeffrey Hatch-Miller

COMMISSIONER

Lowell Gleason

COMMISSIONER

Kristin Mayes

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
Executive Secretary of the Arizona Corporation  
Commission, have hereunto set my hand and caused the  
official seal of the Commission to be affixed at the  
Capitol, in the City of Phoenix, this 11th day of  
May, 2004.

/s/ Michael Kearns for BCM

BRIAN C. McNEIL  
Executive Secretary

DISSENT

This document is available in alternative formats by contacting Yvonne McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail [ymcfarlin@acc.state.az.us](mailto:ymcfarlin@acc.state.az.us)

Crosby Consent.doc (KCD)

**CONSENT TO ENTRY OF ORDER**

1  
2 1. ELLIOT CROSBY ("CROSBY"), an individual, admits the jurisdiction of the  
3 Commission over the subject matter of this proceeding. CROSBY acknowledges that he has been  
4 fully advised of his right to a hearing to present evidence and call witnesses and CROSBY  
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all  
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona  
7 Administrative Code. CROSBY acknowledges that this Order To Cease And Desist, Order of  
8 Restitution, Order for Administrative Penalties and Consent to Same by: Elliot Crosby ("Order")  
9 constitutes a valid final order of the Commission.

10 2. CROSBY knowingly and voluntarily waives any right under Article 12 of the  
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief  
12 resulting from the entry of this Order.

13 3. CROSBY acknowledges and agrees that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. CROSBY acknowledges that he has been represented by counsel in this matter, he  
16 has reviewed this Order with his attorney and understands all terms it contains.

17 5. CROSBY neither admits nor denies the Findings of Fact and Conclusions of Law  
18 contained in this Order.

19 6. By consenting to the entry of this Order, CROSBY agrees not to take any action or  
20 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
21 Fact or Conclusion of Law in this Order or creating the impression that this Order is without  
22 factual basis. CROSBY will undertake steps necessary to assure that all of his agents and  
23 employees, if any, understand and comply with this agreement.

24 7. While this Order settles this administrative matter between CROSBY and the  
25 Commission, CROSBY understands that this Order does not preclude the Commission from  
26 instituting other administrative proceedings based on violations that are not addressed by this



1 Order.

2 8. CROSBY understands that this Order does not preclude the Commission from  
3 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
4 that may be related to the matters addressed by this Order.

5 9. CROSBY understands that this Order does not preclude any other agency or officer  
6 of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
7 proceedings that may be related to matters addressed by this Order.

8 10. CROSBY agrees that he will not apply to the state of Arizona for registration as a  
9 securities dealer or salesman or for licensure as an investment adviser or investment adviser  
10 representative until such time as all restitution and penalties under this Order are paid in full.

11 11. CROSBY agrees that he will not exercise any control over any entity that offers or  
12 sells securities or provides investment advisory services, within or from Arizona.

13 12. CROSBY agrees that until restitution and penalties are paid in full, CROSBY will  
14 notify the Director of the Securities Division within 30 days of any change in home address or any  
15 change in CROSBY's ability to pay amounts due under this Order.

16 13. CROSBY understands that default shall render him liable to the Commission for its  
17 costs of collection and interest at the maximum legal rate.

18 14. CROSBY agrees that he will continue to cooperate with the Securities Division  
19 including, but not limited to, providing complete and accurate testimony at any hearing in this  
20 matter and cooperating with the state of Arizona in any related investigation or any other matters  
21 arising from the activities described in this Order.

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1           15.     CROSBY consents to the entry of this Order and agrees to be fully bound by its  
2 terms and conditions. If CROSBY breaches any provision of this Order, the Commission may  
3 vacate this Order and restore this case to its active docket.

4  
5                               /s/ Elliot Crosby  
6                               ELLIOT CROSBY

7 SUBSCRIBED AND SWORN TO BEFORE me this 13th day of April, 2004.

8                               /s/ Beronica Sandoval  
9                               NOTARY PUBLIC

10 My Commission Expires:  
11 4/14/2006